PENGARAH KASTAM DAN EKSAIS PERAK & ANOR A

v.

TING MENG HWA

HIGH COURT MALAYA, IPOH B
AHMAD NASFY JC
[CIVIL APPEAL NO: 12B-10-01-2012]
9 APRIL 2013

CUSTOMS AND EXCISE: *Seizure - Vehicle - Classification of vehicle - Import duty paid - Mistake in classifying vehicle as van instead of car - Failure to pay compound - Whether Customs Department made mistake in classification of vehicle - Failure to return seized vehicle - Whether doctrine of estoppel applied - Damages - Value of vehicle - Whether respondent estopped from claiming damages pursuant to s. 132 Customs Act 1967 - Evidence Act 1950, ss. 31 & 115* C D

In 1998, the respondent ('plaintiff') bought a vehicle through one Messrs Tenagawan Bersaudara Sdn Bhd in Terengganu. Prior to the said purchase, the Road Transport Department of Kedah ('Kedah RTD') with PUSPAKOM had examined the vehicle and verified it as "window van". Based on this verification, the plaintiff paid an import duty of RM25,000 as assessed by the Customs Department of Langkawi. Thereafter, the first defendant detained the vehicle and requested for further assessment to be made. A reply then came and stated that the said vehicle was a station wagon and subject to 170% import duty and 10% duty sales. A letter from PUSPAKOM confirmed that there was a mistake in classifying the said vehicle as a van instead of a car. The first appellant ('first defendant') then issued a "notis rampasan" against the said vehicle and seized the same together with its original registration card. The appellants ('defendants') then issued a letter dated 24 August 2000 informing the plaintiff about the alleged offence under s. 133(1)(a) and s. 135(1)(d) of the Customs Act 1967 ('Customs Act'). The first defendant then offered the plaintiff a compound of RM5,000 and requested her to pay a further amount of RM44,858.15 but she refused. Due to this, the plaintiff was charged in the Magistrate's Court. However, she was acquitted and discharged without her defence being called. The learned Magistrate also made a direction for the said vehicle to be returned to the plaintiff. The plaintiff then filed a suit in the E F G H I

Sessions Court for unlawful seizure resulting in the depreciation of value of the car. The defendants' application to strike out the plaintiff's action was allowed but the High Court reversed the decision. Hence, the learned Sessions Judge ruled that he could not consider certain issues which had been fully ventilated by the High Court. There was no appeal against the order of the High Court Judge but the defendants filed an appeal against the decision of the Sessions Court. In the circumstances, the remaining issues to be determined herein were: (i) whether the first defendant had made a mistake in the initial process of classifying the plaintiff's vehicle; and (ii) whether the plaintiff could claim for damages. It was the defendants' argument that pursuant to s. 132 of the Customs Act, the plaintiff was estopped from claiming for damages.

Held (dismissing appeal):

(1) The defendants had failed to show that there was an advertent error on the Kedah RTD and Custom's Department of Pulau Langkawi in classifying the said vehicle as a window van. The initial decision on the said vehicle as window van still remained valid. It would be plainly wrong to allow the first defendant to review the initial classification as the plaintiff, having relied on the initial classification, had duly paid the import duty payable. Hence, the defendants were estopped by the doctrine of estoppel which is entrenched in ss. 31 and 115 of the Evidence Act 1950. In *Koperasi Kasuma (M) v. Pengarah Tanah & Galian Selangor & Ors*, it was held that in appropriate circumstances, estoppels may apply against the government. Given the facts of this appeal, this was an appropriate case where the doctrine of estoppel ought to apply. (paras 13 & 15)

(2) The seizure of the vehicle was made without any reasonable or probable cause by the first defendant's agent, *ie*, SD1. Thus, it follows that s. 132 of the Customs Act is triggered and the plaintiff was entitled for the sum of RM35,460.99, being the value of the vehicle. (para 17)

Case(s) referred to:
Koperasi Kasuma (M) v. Pengarah Tanah & Galian Selangor & Ors [1991] 2 CLJ 1371; [1991] 3 CLJ (Rep) 44 HC ***(refd)***
Pickard v. Sears [1837] 6 A & El 469 ***(refd)***
Public Textiles Berhad v. Lembaga Letrik Negara [1976] 1 LNS 120 FC ***(refd)***

Legislation referred to:
Customs Act 1967 (the Act), ss. 132, 133(1)(a), 135(1)(d)
Evidence Act 1950, ss. 31, 115
Subordinate Courts Rules 1980, O. 14 r. 21(1)(a), (b), (d)

For the appellant - Azamudin; FC
For the respondents - Meor; M/s Mahinderjit Meor & Assoc

[Appeal from Sessions Court, Ipoh; Summons No: 51-12-2009]

Reported by Kumitha Abd Majid

JUDGMENT

Ahmad Nasfy JC:

Appeal

[1] This is an appeal by the appellant/defendants against the decision of the learned Session Judge given in Ipoh Session Court on 22 December 2011. In this judgment the parties will be referred to as they appear in the court below.

Brief Facts

[2] Sometime in year 1998, the plaintiff has bought a vehicle bearing a registration number SUKOM 1488 with chasis No. N30-1001688 through one M/s Tenagawan Bersaudara Sdn Bhd in Terengganu.

[3] Prior to the said purchase, Kedah's RTD with PUSPAKOM have examined the said vehicle and verified as "window van" (exh. P3). Based on this verification, plaintiff had fill up Form 1 and paid an import duty of RM25,000 as assessed by the Langkawi's Custom (exh. P4 and P11).

[4] Subsequently, the first defendant issued a "Notis Rampasan" (exh. P5) against the said vehicle and seized the same together with its original registration card. The defendants then issued a

letter dated 24 August 2000 informing the plaintiff about the alleged offence under s. 133(1)(a) and s. 135(1)(d) of the Customs Act 1967 ('the Act'). The first defendant then offered the plaintiff a compound of RM5,000 and requested her to pay a further amount of RM44,858.15 but she refused.

[5] The plaintiff was charged in Sri Manjung Magistrate Court for the offence under the above stated provisions. She was acquitted and discharged without her defence being called. The learned Magistrate also made a direction for the said vehicle to be returned to the plaintiff.

[6] In consequence thereto, the plaintiff send a notice of demand dated 19 October 2000 *vide* her solicitor demanding the return of the said vehicle. The first defendant however did not reply to the said demand.

[7] In this case the plaintiff's cause of action is founded on unlawful seizure of the car by the defendant which resulting in the depreciation of value of the car. Thus the plaintiff claims the following reliefs:

(i) General damages for the depreciation value of the said vehicle;

(ii) Loss of usage since 25 February 2000 - 26 May 2008 @ RM200 per day; and

(iii) 8% interest.

[8] Prior to the hearing of this case before the learned Session Judge, the defendants had filed an application pursuant to O. 14 r. 21(1)(a),(b) and (d) Subordinate Courts Rules 1980 to strike out the action on the grounds that it did not disclose any reasonable cause of action frivolous and vexatious and/or an abuse of the court process. In their affidavit of support, the defendants relied on the following main grounds:

(i) Limitation has set in pursuant to s. 2(a) of PAPA;

(ii) The plaintiff failed to name the specific officer that had detained the said vehicle and;

(iii) The seizure was made pursuant to s. 132 of the Act. Hence no damages could be claim arising from the detention.

[9] The application was allowed by the learned Session Judge on 15 January 2010 (encl. 13). However on appeal it was reversed by the learned High Court Judge on 17 January 2011. There was no appeal by the defendants against the said decision. Hence the learned Session Judge ruled that for purposes of this trial, he would not consider anyone (i-ii) of above issues, which approach I agree since the issues have been fully ventilated at the High Court on appeal. Thus it is my considered view that the same issues cannot be rehashed before the Sessions Judge. In any event the defendant is estopped from raising these issues in this present appeal as there was no appeal against the order by the learned High Court judge.

[10] In the circumstances, I am of the view that the remaining issues to be determined in this appeal are as follows:

(i) Whether first defendant had made a mistake in the initial process of classifying of the said vehicle; and

(ii) Could the plaintiff claim for damages.

Finding Of Court

Issue 1 – Whether First Defendant Has Made A Mistake In Initial Classifying Of The Said Vehicle

[11] In the present case, Road Transport Department of Kedah has classified the said vehicle as window van and the import duty has been paid by the plaintiff (exh. P4 and P11) is compliance with the said classification. These pieces of evidence have never been challenged by the defendants. Thus the status of the said vehicle remained as a window van.

[12] Despite having knowledge of the classification by the Road Transport Department it would appear that the first defendant detained the vehicle and requested for further assessment to be made against the said vehicle (exh. D11 and D12). A reply then came and stated that the said vehicle is a station wagon and subject to 170% import duty and 10% duty sales. A letter from Alor Setar's PUSPAKOM confirmed that there was a mistake in classifying the said vehicle as a van instead of a car (exh. P14).

[13] It is my considered view that, the initial decision on the said vehicle as window van by Kedah RTD and Custom of Pulau Langkawi still stands and remain valid. In my judgment it would be plainly wrong to allow the first defendant to review the initial classification as the plaintiff having relied on the initial classification had duly paid the import duty payable. In any event I hold that the defendants are estopped by the doctrine of estoppel which is entrenched in ss. 31 and 115 of the Evidence Act 1950. In the case of *Public Textiles Berhad v. Lembaga Letrik Negara* [1976] 1 LNS 120; [1976] 2 MLJ 58 the then Federal Court referred to with approval the description of estoppel in the case of *Pickard v. Sears* [1837] 6 A & El 469, 474:

> That, where one, by his words or conduct, willfully causes another to believe in the existence of a certain state of things, and induces him to act on that belief, or to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time.

It is-pertinent to state that Wan Yahya J sitting in the High Court Shah Alam in the case of *Koperasi Kasuma (M) v. Pengarah Tanah & Galian Selangor & Ors* [1991] 2 CLJ 1371; [1991] 3 CLJ (Rep) 44 acknowledged that in appropriate circumstances estoppel may apply against the government. In my respectful view, given the facts of this appeal, this is an appropriate case where the doctrine of estoppel ought to apply.

[14] I am further fortified in the decision that I have arrived at above by the fact that the learned Magistrate has acquitted and discharged the plaintiff without defence been called under s. 133(1)(a) and s. 135(1)(D) of the Act 1967. No appeal was filed against that decision. This would point out to the absence of culpability on the part of the plaintiff.

[15] Having given the record of appeal careful and minute consideration I find that the defendants have failed to show that there indeed that there was advertent error on the Kedah RTD and custom's department of Pulau Langkawi in classifying the said vehicle as a window van.

Issue II – Could The Plaintiff Claim For Damages?

[16] The learned Federal Counsel submitted that pursuant to s. 132 of the Act, the plaintiff is estopped from claiming the damages against the defendant. Section 132 of the Act reads as follows:

> No person shall in any proceeding before any court in respect of the seizure of any goods seized in exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or any damages or other relief other than as order for the return of such goods or the payment of their value unless such seizure was made without reasonable or probable cause.

[17] In my view the submission is totally misconceived. As stated above I hold that the seizure in the present case was made without any reasonable or probable cause by the first defendant's agent ie, SD1. Thus it follows therefore that s. 132 of the Act is triggered and thus the plaintiff is entitled for the payment of the vehicle value. In the present case, the said vehicle was valued at RM35,460.99. Thus the plaintiff is entitled for that value.

Conclusion

[18] Based on the reasons adumbrated above, I find no merit in the appeal. Thus the defendants' appeal stands dismissed with no order as to costs.